

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 21569 of 2006(P)

PETITIONER:

**J.VALSALA, SANSKRIT TEACHER,
B.E.M.U.P.SCHOOL, PARAPPERI,
P.O.THRIPRANGODE, MALAPPURAM DISTRICT.**

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:

- 1. THE CORPORATE MANAGER OF ALL C.S.I.
SCHOOLS IN MALABAR AND WYNAD, BANK ROAD,
KOZHIKODE.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM.**
- 3. G.PADMAKUMARI AMA, SANSKRIT TEACHER,
B.E.M.U.P.SCHOOL, THRIKKIDEERI,
OTTAPPALAM, PALAKKAD DISTRICT.**

**BY ADV. SRI.GEORGE ABRAHAM
GOVT.PLEADER SRI.T.T.MUHAMMED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE COPY OF THE ORDER DATED 02-07-03 OF THE SECOND RESPONDENT.
EXT.P2	TRUE COPY OF THE GOVT. LETTER DATED 12-12-03
EXT.P3	TRUE COPY OF THE JUDGMENT DATED 26-3-04 IN W.P.C.NO.6863/04
EXT.P4	TRUE COPY OF THE ORDER DATED 4-5-04 OF THE FIRST RESPONDENT.
EXT.P5	TRUE COPY OF THE APPEAL DATED 31-05-04 OF THE PETITIONER TO THE SECOND RESPONDENT.
EXT.P6	TRUE COPY OF THE ORDER DATED 7-11-05 OF THE SECOND RESPONDENT.
EXT.P7	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 8-10-05
EXT.P8	TRUE COPY OF THE JUDGMENT DATED 26-05-06 IN W.P.C.NO.35358/05
EXT.P9	TRUE COPY OF THE JUDGMENT DATED 03-07-06 IN W.A.NO.960/06
EXT.P10	TRUE COPY OF THE ORDER DATED 26-6-06 OF THE SECOND RESPONDENT.

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.21569 OF 2006

Dated this the 8th day of January 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is working as a Sanskrit Teacher in the school under the management of the first respondent. The second respondent in Ext.P1 and the Government in Ext.P2 orders directed the manager to consider the request of the petitioner in accordance with the Rules. From Ext.P3 it can be seen that the Manager agreed to act in accordance with Ext.P1. But by Ext.P4 the request was rejected. Petitioner filed Ext.P5 appeal before the DPI. In Ext.P6 the DPI found that petitioner need be transferred only to the next vacancy. By Ext.P8 judgment this court set aside Ext.P6 and DPI was directed to reconsider the matter. Petitioner filed an appeal against Ext.P8 judgment. By Ext.P9 judgment this court refused to interfere with the matter holding that petitioner's

challenge against Ext.P6 had already been accepted by this court and directed the matter to be reconsidered. Ext.P10 is the consequential order. The relevant portion of Ext.P10 is extracted below:

“ The matter has been discussed in detail at the time of hearing. Clause 2(b) cannot be interpreted to remove a person already working in a school as a teacher just because another teacher who has service seniority seeks transfer to that school. It is applicable to open vacancies.

Rule 10(3) Chapter XIV KER is applicable only to close relative of Jawans, inter-caste marriage, Physically handicapped, other grounds for special consideration, compassionate grounds, persons who have only one year of service left from retirement etc.”

2. Learned counsel for the petitioner Adv.SRi.V.Rajendran would contend that the interpretation placed is absolutely incorrect and illegal and it amounts to overlooking of Ext.P8 judgment. He would submit that it is a clear case where the matter is concluded by the judgment of this court and the reason given for not allowing the claim of the petitioner is unjustifiable.

3. I heard learned counsel for the third respondent also

besides the learned Government Pleader. Learned Government Pleader would fairly submit that it is a case of mis-interpretation of the provision by the DPI. However, learned counsel for the third respondent Adv.Sri.George Abraham would attempt to wriggle out of Ext.P10 order by raising a new contention. According to him Clause 2(b) cannot be pressed into service for aided school teachers on the reason that the same is not applicable. He would submit that this court had proceeded on the basis of the Government order dated 22-05-89 wherein Clause 2(b) appears. He would further submit that so far as Government teachers are concerned there is a separate Government order dated 10-09.89. Referring to the order dated 10-09-89 he would say that Clause 2(b) to be found in order dated 22-05-89 is not incorporated in order dated 10-09-89 and therefore clause 2(b) cannot be pressed into service by the petitioner. In other words unless there is a open vacancy it is not open to the petitioner to raise a claim, he submits. Per contra learned counsel for the petitioner would say that order

dated 10-09-89 is also subject to order dated 01-06-87. He would rely on the order dated 11-05-88 by which Rule 2(b) is incorporated in order dated 01-06-87. He would further refer to the order dated 24-02-2000 wherein also the provision in Rule 2 (b) makes it appearance as clause 3. He would further say that even though there may not have been any amendment to the order dated 10-09-87 incorporating the specific amendment to the order dated 01-06-87, having regard to Rule 10 of Chapter XIV A which states that the principles governing Government teachers will be applicable to the extent possible, invoking clause 2(b) cannot be called in question.

4. I would think that the contention raised by the counsel for the third respondent cannot be accepted for more reasons than one. In the first place it is to be noted that this court has placed an interpretation on the matter namely Clause 2(b) and this court has proceeded on the basis that clause 2(b) is applicable. No appeal is preferred by the third respondent. In fact it is the petitioner who

had preferred the appeal which resulted in Ext.P9 judgment. Third respondent having failed to question the applicability of clause 2(b) in appropriate proceedings before this court cannot be permitted to take a new stand in this proceedings. Besides that I cannot brush aside as irrelevant the arguments based on order dated 11-05-88 by which order clause 2(b) is incorporated in order dated 01-06-87. In fact learned Government Pleader does not have a case that Rule 2(b) is not applicable. Further it is to be noted in Ext.P10 order that the DPI has no case that Clause 2(b) is inapplicable. The DPI has proceeded to take a view about Clause 2(b) and found that clause 2(b) cannot be interpreted to remove a person already working in a school as a teacher just because another teacher who has service seniority seeks transfer to that school. I must note that the attempt by the DPI appear to over-reach himself which he cannot do in view of Ext.P8 judgment of this court as merged in Ext.P9 judgment of the Division Bench. It is not open to the party to a proceeding or somebody who is

bound by the judgment otherwise to take the role of the judge or place an interpretation contrary to the declaration of the law made by the court. But that is precisely what the DPI has done. In such circumstances the interpretation placed in Ext.P10 regarding the scope of Clause 2(b) cannot be accepted. If that be so the matter requires to be reconsidered. Accordingly Ext.P10 is quashed. There will be a direction to the second respondent to reconsider the matter after hearing the petitioner, the manager and the third respondent and pass appropriate orders in accordance with law within a period of one month from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

**K.M.JOSEPH
JUDGE.**

SV.

